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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-259
	)	
Broadcast Signal Carriage Issues	)	

REPLY COMMENTS OF
PULITZER BROADCASTING COMPANY

Pulitzer Broadcasting Company ("PBC"),[1] by its attorneys, hereby submits its Reply Comments with respect to the implementation of regulations relating to mandatory carriage of television broadcast signals and retransmission consent addressed in the Notice of Proposed Rule Making ("Notice"), in the above-referenced proceeding. PBC's Reply Comments respond to Comments filed by the National Association of Broadcasters ("NAB"), the National Cable Television Association ("NCTA"), CBS, Inc. ("CBS"), Capital Cities/ABC, Inc. ("ABC"), National Broadcasting

1/ PBC is the licensee of the following television stations: WLKY-TV, Louisville, Kentucky; WYFF-TV, Greenville, South Carolina; WXII-TV, Winston-Salem, North Carolina; KETV(TV), Omaha, Nebraska; KOAT(TV), Albuquerque, New Mexico; KOVT(TV), Silver City, New Mexico and WGAL(TV), Lancaster, Pennsylvania.

PBC is the parent company of WDSU Television, Inc., licensee of WDSU-TV, New Orleans, Louisiana.

PBC is the permittee of KOAV(TV), Gallup, New Mexico.

Company, Inc. ("NBC"), and the Community Antenna Television Association, Inc. ("CATA"). In support hereof, the following is shown:

An overriding principal of fundamental importance is at stake in this proceeding. Congress has concluded that there is a substantial government interest in protecting free, over the air television broadcasting and ensuring that cable television subscribers have access to local commercial and noncommercial broadcast stations. Notice at ¶ 4. In light of this Congressional finding, PBC urges the Commission to adopt rules affording broadcasters with maximum flexibility to protect this public important interest. PBC agrees with the Comments submitted by the NAB with respect to proposed regulations regarding mandatory carriage and retransmission consent. In addition, PBC urges the Commission to establish must carry rules which will be consistent with its program exclusivity rules.

A. Must Carry Rules Must Give Broadcasters Maximum Flexibility to Serve Every Community in the Broadcaster's ADI

Definitial issues underlie the implementation of the must carry provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). For the purpose of defining a "local commercial television station", the Commission must determine the geographical market of both the broadcast station and the cable operator. Congress mandated that a broadcasting station's market would be determined pursuant to

Section 73.3555(d)(3)(i) of the Commission's Rules, which incorporate by reference Arbitron's Area of Dominant Influence ("ADI") market survey. To some extent, as the Commission noted, ADIs change from year to year. Such changes should be reflected in a station's market pursuant to the procedures the Commission proposes for adding or deleting communities from a station's television market. Specifically, a written request to add or subtract a community to a station's television market which is made pursuant to the procedures for petitions for special relief should be deemed prima facie grounds for granting such petitions when made pursuant to a change in an annual ADI survey.

The matter of defining the location of a cable television system should simply reflect the geographic market in which the cable system operates. Each cable system which has a franchise in any community located in a broadcast station's ADI should be subject to mandatory carriage. The fact that cable operators may have chosen to technically integrate several cable systems over a wide geographic area, which may encompass communities located in more than one ADI, does not alter this fundamental requirement.[2/]

2/ Section 614(a) of the 1992 Cable Act states that "[e]ach cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations." Subject to Section 614(h)(1)(B) of the 1992 Cable Act, Section 614(h)(1)(A) defines a "local commercial television station" as

> any full power television broadcast station, other than a qualified noncommercial educational television station ... licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is

(continued...)

It is the location of the <u>community</u>, and broadcast service to that community, which Congress has determined is of paramount concern. Accordingly, the location of a cable system's principal headend should not determine the television market in which the cable system is located.

Under the must carry provisions of the 1992 Cable Act, the location of the cable system's headend is relevant only for determining exclusions to the definition of a local broadcast station. 47 U.S.C. Sec. 534(h)(1)(B)(iii). The Act clearly contemplates circumstances in which a local television station could elect must carry status despite its existing signal limitations, provided that the station pays for the costs of delivering a good quality signal to the principal headend. This requirement balances the interests of cable operators and broadcasters. If a cable operator has invested in technically integrating several cable systems, the investment is protected by requiring a broadcast station to pay the costs of delivering a good quality signal to the principal headend. However, the technical integration of several cable systems should not serve to shield cable operators from the explicit provisions of the 1992 Cable Act and the intent of Congress. Indeed, if Congress

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<u>2</u>/(...continued)
within the same television market as the cable system.

Section 76.5 of the Commission's Rules defines a "cable system" as a "facility ... that is designed to provide cable service ... to multiple subscribers within a community."

intended to define the location of a cable system's market based on the location of its principal headend it surely would have.

B. **The Commission Must Conform Its <u>Must Carry and Program Exclusivity Rules</u>**

As the Commission noted, implementation of the must carry rules may be inconsistent with its program exclusivity rules. <u>Notice</u> at ¶ 23. In its Comments, the NCTA specifically noted that in the Albuquerque, New Mexico ADI, in which PBC operates station KOAT(TV), a cable operator may be forced to carry three network affiliates, and then delete programming on other network-affiliated stations located in the ADI which are also eligible for must carry status. PBC urges the Commission to develop program exclusivity rules which are consistent with its must carry rules. As several commentors noted, under any likely scheme of must carry, inconsistencies with the Commission's program exclusivity rules would develop. The program exclusivity rules should be either eliminated to provide complete freedom for broadcasters and program suppliers to negotiate exclusivity agreements, or modified to permit exclusivity arrangements on an ADI-wide basis. The development of consistent rules would ensure that (i) the Commission's must carry rules are consistent with its program exclusivity rules, (ii) broadcasters and program suppliers have greater freedom to negotiate exclusivity agreements, and (iii) the regulatory distinction between broadcast and nonbroadcast technologies with respect to exclusivity is eliminated.

In addition to owning KOAT(TV), PBC owns a satellite television station in the Albuquerque ADI which would be eligible for must carry status. The satellite station is also a network-affiliated station, and substantially duplicates the signal of KOAT. Section 614(b)(5) of the 1992 Cable Act does not require the cable operator to carry the signal of any local stations which substantially duplicate the signal of another local station. However, the imposition of program exclusivity may depend, as it does in the Albuquerque ADI, on which of the commonly-owned stations is carried on a particular cable system. For example, as NCTA noted, a cable operator may be required to carry KOAT and then delete some of its programming because there is a closer network-affiliated station in the ADI. However, if PBC requested the cable operator to carry KOAT's satellite station, KOAT could preserve its program exclusivity. Therefore, in the event the Commission declines to conform its must carry and program exclusivity rules, PBC urges the Commission to permit broadcasters who own satellite stations to designate which signal is to be provided to the cable system pursuant to the licensee's must carry election. This would provide the broadcaster with maximum flexibility to conserve substantial expenses in connection with delivering a good quality signal to the cable system's headend, and preserve existing local viewing patterns. In other words, a cable operator should not be permitted to dictate to the broadcaster which of the broadcaster's commonly-owned stations should be carried.

In the Albuquerque ADI, for example, terrain limitations and the cost of delivering a good quality signal to a particular cable headend may prevent PBC from providing the signal of KOAT, the parent station, to a particular cable system in the ADI. Requiring PBC to provide the signal of KOAT, rather than its satellite, could cause the station to expend substantial resources to provide a good quality signal to the cable headend, and could disrupt existing local viewing patterns by causing KOAT's signal to be deleted pursuant to the Commission's program exclusivity rules. Such a result would not be consistent with the 1992 Cable Act's primary objective in ensuring the continuation of "localism." See 47 U.S.C. Sec. 521(a)(9)-(11).

Respectfully submitted,

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